

J. Huizinga Cartage Co., Inc. and Simpson Motor Transportation, Inc., single employer and/or joint employers and Floyd Richardson and David Toles and Leonard Atkins. Cases 13-CA-26223, 13-CA-26255, and 13-CA-26274

July 31, 1992

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

On June 28, 1990, the National Labor Relations Board issued a Decision and Order in this proceeding.¹ On August 28, 1991, the United States Court of Appeals for the Seventh Circuit entered a judgment enforcing in full the backpay provisions of the Board's Order.² A controversy having arisen over the amount of backpay due the discriminatees under the Board's Order, the Regional Director for Region 13 on November 27, 1991, issued and caused to be served on the parties a compliance specification and notice of hearing alleging the amount of backpay due under the terms of the Board's Order, and notifying the Respondent that it must file a timely answer complying with the Board's Rules and Regulations. On March 5, 1992, the Respondent filed its answer to the compliance specification, and on March 20, 1992, the Respondent filed its amended answer.

Thereafter, on May 21, 1992, the General Counsel filed a Motion to Strike Portions of Respondent's Answer to Backpay Specification and for Partial Summary Judgment, with exhibits attached. The General Counsel submits that portions of the Respondent's amended answer to the compliance specification are not in compliance with Section 102.56(b) and (c) of the Board's Rules and Regulations. Therefore, the General Counsel moved that paragraph IV of the Respondent's amended answer be stricken and that partial summary judgment be granted. On May 28, 1992, the Board issued an order transferring the proceeding to the Board and Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent has not filed a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record in this case, the Board makes the following

Ruling on the Motion to Strike and for Partial Summary Judgment

Section 102.56(b) and (c) of the Board's Rules and Regulations states:

¹ 298 NLRB 965 (reissued Aug. 23, 1990).

² 941 F.2d 616.

(b) *Contents of answer to specification.*—The answer shall specifically admit, deny, or explain each and every allegation of the specification, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. Denials shall fairly meet the substance of the allegations of the specification at issue. When a respondent intends to deny only a part of an allegation, the respondent shall specify so much of it as is true and shall deny only the remainder. As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent disputes either the accuracy of the figures in the specification or the premises on which they are based, the answer shall specifically state the basis for such disagreement, setting forth in detail the respondent's position as to the applicable premises and furnishing the appropriate supporting figures.

(c) *Effect of failure to answer or to plead specifically and in detail to backpay allegations of specification.*— . . . If the respondent files an answer to the specification but fails to deny any allegation of the specification in the manner required by paragraph (b) of this section, and the failure so to deny is not adequately explained, such allegation shall be deemed to be admitted to be true, and may be so found by the Board without the taking of evidence supporting such allegation, and the respondent shall be precluded from introducing any evidence controverting the allegation.

The specification duly served on the Respondent states that, pursuant to Section 102.56 of the Board's Rules and Regulations,

the Respondent shall, within 21 days from the date of the Specification, file . . . an answer to the Specification. To the extent that such Answer fails to deny allegations of the Specification in the manner required under the Board's Revised Rules and Regulations, and the failure to do so is not adequately explained, such allegations shall be deemed to be admitted to be true, and the Respondent shall be precluded from introducing any evidence controverting them.

In paragraph IV the specification alleges that an appropriate measure of the quarterly gross backpay for the discriminatees is the quarterly earnings of Joseph Borocz, a representative employee, who worked in a driver position similar to those of the discriminatees during the backpay period. The amended answer states that the Respondent is unaware of Joseph Borocz and

demands proof that he represents the appropriate measure of the quarterly gross backpay due the discriminatees.

As indicated above, the General Counsel filed a motion to strike the Respondent's answer to paragraph IV of the compliance specification on the basis of alleged deficiencies. We find that the answer is deficient insofar as it contains general denials concerning the computation of gross backpay, a matter within the Respondent's knowledge. Those denials are insufficient because they do not fairly meet the substance of the allegations of the specification, nor do they reveal any specific basis for disagreement with the specification's allegations, or offer or set forth in detail supporting figures, and an alternative formula for computing the backpay amount with appropriate alternative figures.³ Thus, we agree with the General Counsel that paragraph IV of the Respondent's answer fails to comply with the requirements of Section 102.56(b) and (c). We therefore grant the General Counsel's motion to strike this paragraph from the answer.

With the exception of the amount of the discriminatees' interim earnings, and the dental expenses and backpay period for David Toles, the Respondent has either admitted all other allegations in the specification or denied them in a manner insufficient under Section 102.56(b) and (c) of the Board's Rules and Regulations. Therefore, we deem the Respondent

to have admitted those other allegations to be true. Accordingly, we shall grant the General Counsel's Motion for Partial Summary Judgment and shall direct a hearing limited to determining the amount of the discriminatees' interim earnings, and to the dental expenses and backpay period for David Toles.

ORDER

It is ordered that the General Counsel's motion to strike the Respondent's answer to paragraph IV is granted.

IT IS FURTHER ORDERED that the General Counsel's Motion for Partial Summary Judgment is granted except with regard to the allegations concerning the amount of the discriminatees' interim earnings, and to the dental expenses and backpay period for David Toles.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 13 for the purpose of issuing a notice of hearing and scheduling a hearing before an administrative law judge for the purpose of taking evidence concerning the amount of the discriminatees' interim earnings, and concerning the dental expenses and backpay period for David Toles. The judge shall prepare and serve on the parties a decision containing findings of fact, conclusions of law, and recommendations based on all the record evidence. Following service of the judge's decision on the parties, the provisions of Section 102.46 of the Board's Rules and Regulations shall be applicable.

³ See, e.g., *Robincrest Landscaping & Construction*, 303 NLRB 377 (1991); *Heck's Inc.*, 282 NLRB 263 (1986).